688

SUPREME COURT OF THE UNITED STATES.

No. 38.

ELISHA WINN ET AL, PLAINTIFFS IN ERROR,

VERSUS

LESSEE OF WILLIAM PATTERSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF GEORGIA.

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ROE, tenants, ELISHA WINN AND OTHERS, *Plaintiffs in error, ads.*
DOE, WILLIAM PATTERSON, *Defendants in error.*

The plaintiffs in error, by their attorney, Seaborn Jones, allege that there is manifest error in the sixth circuit court of the district of Georgia, in the following particulars, to wit:

1st. For that said court erred in admitting a paper in evidence, purporting to be a copy of a power of attorney from Basil Jones to William Smyth, jr., when the said paper was only the copy of a copy; and when Abram Jones and Thomas Harwood, junior, purport to be subscribing witnesses to the original paper, and no evidence was offered to prove the death, or other inability of said Thomas Harwood, jr., to give his testimony before said court; and no sufficient proof of the hand-writing of Abram Jones, the other subscribing witness, was adduced; and when there was no proof of the existence and genuineness of said original power, or of the execution of the same; and when the said pretended power of attorney had never been recorded in the proper office designated by the laws of the State of Georgia, and when there was no proof of possession following and accompanying, said deed.

2d. For that said court erred in refusing to instruct the jury, that if the said jury believed that Basil Jones, the deputy surveyor and grantee, under whom the lessor of the plaintiffs below, claims, by designating the stream marked in the original plat, as *the branch* of the south fork of the Oconee river, instead of the south fork of the Oconee river, and by stating that the land was situate in the "county of Franklin," when a large part of the same lay without the limits of the county of Franklin, and without the limits of the then boundary line of the State of Georgia, practised a deception upon the Governor of the State of Georgia, and thereby induced him to issue a grant; that such grant is fraudulent and void.

3d. And the said court erred in refusing to instruct the jury, that a grant of land is an etirety; and that a grant of land void in part, is void for the whole.

4th. For that the said court further erred in refusing to instruct the jury, that a concealment, or misrepresentation, of materials facts, calculated to deceive the governor issuing the grant, renders the grant null and void in law.

And the said court erred in each, and every other opinion, given on the trial of said cause, against the said plaintiffs in error.

SEABORN JONES,
Attorney for Plaintiffs in error.

Declaration.

United States of America, *District of Georgia.*

To the honorable the judges of the sixth Circuit Court of the United States, to be holden in and for the district of Georgia.

The petition of John Doe, who avers himself to be a citizen of, and residing in the State of Maryland, in the said United States of America,

Humbly showeth, that your petitioner hath been injured and sustained damage of Richard Roe, whom your petitioner avers to be a citizen of, and residing in the State of Georgia, in the said United States, to the amount and in the sum of twenty thousand dollars. For that one William Patterson, esq., whom your petitioner avers to be likewise a citizen of, and residing in the State of Maryland aforesaid, on the first day of December, in the year of our Lord one thousand seven hundred and ninety-three, in the county of Franklin, in the district of Georgia aforesaid, had demised to your petitioner a certain tract or parcel of land, lying and being at the time of survey in the county of Franklin, in the said State and district of Georgia aforesaid, and now in Gwinnett county, in the said State, and district, surveyed

for and estimated at the time of survey to contain seven thousand three hundred acres, but actually containing fifteen thousand acres, butting and bounding at the time of survey northwest by vacant land, northeast by Basil Jones's, Collier's, and John Cobb's land, southeast by Collier's land, and southwest by Richard Call's and Jones's land; and which said tract of land was originally granted to Basil Jones, on the twenty fourth day of May, in the year of our Lord one thousand seven hundred and eighty-seven, with the appurtenances, to have and to hold the same to your petitioner and his assigns, from the said first day of December, in the year first aforesaid, for and during and until the full end and term of forty years, from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, your petitioner entered into the said tract of land, with the appurtenances above mentioned, and became and was thereof possessed for the said term, so to him thereof granted as aforesaid, and your petitioner being so thereof possessed, the said Richard Roe afterwards, to wit, on the first day of January, in the year of our Lord one thousand seven hundred and ninety-four, with force and arms, &c. entered into the said tract of land, with the appurtenances first above mentioned, in which your petitioner was so interested in manner and for the term aforesaid, which is not yet expired, and ejected your petitioner from his said farm.

And also, for that the said William Patterson, esq., whom your petitioner avers to be likewise a citizen of, and residing in the State of Maryland aforesaid, on the first day of January, in the year of our Lord one thousand eight hundred and twenty, in the county of Gwinnett, in the district of Georgia aforesaid, had demised to your petitioner a certain other tract or parcel of land, situate, lying, and being, at the time of survey, in Franklin county, in the said State and district of Georgia, and now in Gwinnett county, in the said State and district, surveyed for, and estimated at the time of survey to contain seven thousand three hundred acres, but actually containing fifteen thousand acres, butting and bounding at the time of survey, northwest by vacant land, northeast by Basil Jones's, Collier's and John Cobb's land, southeast by Collier's land, and southwest by Richard Call's and Jones's land; and which said last mentioned tract of land was originally granted to Basil Jones, on the twenty-fourth day of May, in the year of our Lord one thousand seven hundred and eighty-seven, with the appurtenances, to have and to hold the same to your petitioner and his assigns, from the said first day of January, in the year of our Lord one thousand eight hundred and twenty, for and during, and until the full end and term of twenty years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, your petitioner entered into the said tract of land last mentioned, with the appurtenances, and became and was thereof possessed for the said term, so to him thereof granted as aforesaid and your petitioner being so thereof possessed, the said Richard Roe afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and twenty, with force and arms, &c. entered into the said tract of land, with the appurtenances last above mentioned, in which your petitioner was so interested in manner and for the term aforesaid, which is not yet expired, and ejected your petitioner from his said farm; and other wrongs to your petitioner then and there did, to the great damage of your petitioner, and against the peace of the said United States; wherefore, your petitioner saith he is injured and hath sustained damage of the said

Richard Roe, in the sum and to the amount of twenty thousand dollars, and therefore he brings his suit, &c.

And your petitioner prays process may issue, requiring the said Richard Roe to be and appear at the next sixth circuit court of the United States, to be holden in and for the district of Georgia, then and there to answer your petitioner in an action of ejectment, &c.

RICHARD HENRY WILDE,
Plaintiffs' Attorney.

To Messieurs Elisha Winn, William Maltbie, William Jackson, Isham Williams, Simon Berry, John Berry, jr., John Berry, sr., William Rucks, James Crawford, James Clements, William Baskin, James Nolen, George Nolen, Stephen Nolen, Christopher Addison, Samuel Carruthers, Joshua Hill, Meredith Collier, Benjamin Jackson, Sarah Lawson, James Swinney, William Dobbs, Silas Dobbs, Joel Prickett, David Richardson, James Berry, Mathias Bates, William Tumlin, and Samuel Hamilton, Elijah Tutton.

Notice

GENTLEMEN: I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as a casual ejector only, and having no claim or title to the same. do advise you to appear in the sixth circuit court of the United States, to be held in and for the district of Georgia, at the town of Milledgeville, on the sixth day of May next, by some attorney of that court, and then and there, by rule of the same court, to cause yourselves to be made defendants in my stead; otherwise, I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this 17th day of February, A. D. 1820.

Yours, &c.,
RICHARD ROE.

Process.

UNITED STATES OF AMERICA, *District of Georgia.*

In the sixth circuit court of the United States for the District of Georgia.

[L. S.] GEO. GLEN, *Clerk.*

JOHN DOE, on the demise of WILLIAM PATTERSON,
vs.
RICHARD ROE, ELISHA WINN, and others, tenants. } *Ejectment.*

James Monroe, President of the said United States, to the Marshal of the said District of Georgia, greeting:

The defendant, Richard Roe, is hereby required personally, or by attorney, to be and appear at the sixth circuit court of the United States, to be held in and for the district of Georgia, at the town of Milledgeville, on the sixth day of May next, then and there to answer the plaintiff, in an action of ejectment, &c., as in default thereof the said court will proceed as to justice shall appertain.

Witness, the Honorable John Marshall, Chief Justice of the said United States, this seventeenth day of February, in the year of our Lord one thousand eight hundred and twenty.

Marshal's Return.

DISTRICT of GEORGIA, *May T.*, 1830.

Served a copy on the defendants, James Clement, John Berry, jun., William Rucks, William Baskin, Benjamin Jackson, Samuel Caruthers, Stephen Nolen, Christopher Addison, Wm. Dobbs, Silas Dobbs, Joel Pricket, David Richardson, Mathias Bates, Elisha Winn, Wm. Maltbie, Isham Williams, Elijah Tutton, by leaving at their residence, 4th April, 1820. Gwinnett county.

The return of PETER F. BOISCLAIR, *D. M.*

Served on Simeon Berry, James Crawford, John Berry, sen., Wm. Tumlin, Meredith Collier, James Swinney, Sarah Lawson, George Nolen, James Nolen, Joshua Hill, James Berry, in person. Gwinnett county, 4th April, 1820.

PETER F. BOISCLAIR, *D. M.*

The defendants, Samuel Hamilton and William Jackson, not to be found. 13th April, 1820.

PETER F. BOISCLAIR, *D. M.*

Plea of Elisha Winn.

Sixth Circuit Court, Georgia District.

DOE, on the demise of WILLIAM PATTERSON, *vs.* ROE, ELISHA WINN, and others, tenants. } *Ejectment.*

And now, to wit, on the twelfth day of December, one thousand eight hundred and twenty, comes Elisha Winn, by his attorneys, Habersham and Jones, and confessing lease, entry, and ouster, defends the wrong and injury, when, &c., and says that he is not guilty of the said trespass, in the said declaration, in manner and form as the said plaintiffs hath above declared of against him, and of this he puts himself on the country.

HABERSHAM and JONES, *Defendant's Attorney.*

Plea of Elisha Winn filed 12th December, 1820.

GEO. GLEN, *Clerk.*

Replication.

And the said plaintiff doth the like.

R. H. WILDE, *for Plaintiff.*

Plea of other Defendants.

Sixth Circuit Court, District of Georgia.

DOE ex dem. WM. PATTERSON, *vs.* ROE, ELISHA WINN, and others, tenants. } *Ejectment.*

And now, to wit, on the twelfth day of December, eighteen hundred and twenty, come the said James Clements, John Berry, Isham Williams,

William Maltbie, Simon Berry, John Berry, junior, William Rucks, James Crawford, William Baskin, James Nolen, George Nolen, Stephen Nolen, Christopher Addison, Samuel Carruthers, Joshua Hill, Meredith Collier, Benjamin Jackson, Sarah Lawson, James Swinney, William Dobbs, Silas Dobbs, Joel Prieket, David Richardson, James Berry, Matthias Bates, William Tumlen, and Elijah Tutton, and confessing lease, entry, and ouster, defend the wrong and injury, when and so forth, and say, that they are not guilty of the said trespass in manner and form as the said plaintiff hath above complained of against them, and of this they put themselves on the country.

HABERSHAM and JONES, *Defendants' Attorney.*

And the said plaintiff doth the like.

R. H. WILDE, *for Plaintiff.*

19*th Dec.*, 1820.

Plea filed this 12th Dec., 1820.

GLEN, *Clerk.*

At a court held in Milledgeville, 6th May, 1820; present, Hon. Wm. Johnson and Hon. William Davies.

Rule of Survey.

Doe ex dem. Wm. Patterson,
vs.
Roe, Elisha Winn, et al., tenants. } *Ejectment.*

On motion of plaintiffs' counsel it is ordered, that the county surveyor of Gwinnett county do proceed to make a resurvey of the premises in dispute, carefully noting the interfering lines, if any, and the situation of the dwelling-house or houses, and the cleared land, and designating the particular possession of each tenant, either party to have the liberty of employing an assistant surveyor at his own expense; the party executing the rule to give the opposite party thirty days' notice, and the rule to be returned to this next term of this court. May 8, 1820.

At a regular circuit court of the United States for the district of Georgia, begun and held in Savannah on the 14th of December 1820, Present, Hon. Wm. Johnson and Wm. Davies.

Doe ex dem. Wm Patterson,
vs.
Roe, Elisha Winn, et al. } *Ejectment.*

On motion of the plaintiffs' attorney it is ordered, that the rule of resurvey, obtained in the above case, at the last term, be extended and made returnable to the next term of this court. 19th Dec., 1820.

Doe ex dem. Wm. Patterson,
vs.
Roe, Elisha Winn, et al. } *Ejectment.*

To the defendants' attorneys. Take notice, that the plaintiff will proceed to execute the rule of resurvey in the above case, on the first day of February next. 19th Dec., 1820.

R. H. WILDE, *Plaintiff's Attorney.*

Service of the above acknowledged pursuant to the order of the court in the above case. 19th Dec., 1820.

JONES and HABERSHAM, *Defendants' Attorneys.*

At a court begun and held on the 6th May, 1821, present, Hon. Wm. Johnson

In the Sixth Circuit Court, District of Georgia.

Doe ex dem. Wm. Patterson,
vs.
Roe, Elisha Winn, et al. } *Ejectment.*

Amendment.

It is consented that the declaration in the above case may be amended by increasing the number of acres of land, stated from fourteen to fifteen thousand acres; and that the same amendment may be made in the case of Doe ex dem. Wm. Patterson *vs.* Roe, Willis, Jenks, et al. 7th May, 1821.

JONES, *Defendants' Attorney.*
WILDE, *Plaintiff's Attorney.*

At a regular Sixth Circuit Court of the United States, held in and for the District of Georgia on Friday the 14th December, A. D. 1821: present, the Hon. William Johnson and the Hon. Jeremiah Cuyler.

Doe ex dem. Wm. Patterson,
vs.
Roe, Elisha Winn et al., tenants. } *Ejectment.*

The county surveyor having failed to return his plat according to the rule of this court, it is ordered that a new rule of survey be issued, directed to Robt. Kennedy, Joseph Thompson, Hugh Montgomery, and William Bell, to be executed by them, or either of them, commanding them to resurvey the premises in dispute, carefully noting the interfering lines, and laying down on the plat or plats the several possessions of the tenants, the quantity and lines of the cleared land, and the situation of the dwelling-houses; the party executing the rule to give the opposite party thirty days' notice of the time of executing the same; and that the surveyors should be at liberty to execute their surveys and make their plats jointly or severally.

22d Dec., 1821.

Continued.

At a court begun and held in Milledgeville, 6th May, 1821: present, Hon. Wm. Johnson.

Doe ex dem. William Patterson,
vs.
Roe, Elisha Winn, et al., tenants. } *Ejectment.*

The surveyors executing the rule of survey in the above case, having omitted to note on their plats the situation and quantity of the cleared land, and of the dwelling-houses, as required by the rule, on motion, it is ordered that they have leave to amend their plats, by conforming them to that requisition; and that the rule be enlarged and made returnable to the next term of this court. 9th May, 1821.

Notice.

In the Sixth Circuit Court of the United States, for the district of Georgia.

JOHN DOE ex dem. WILLIAM PATTERSON, *vs.* RICHARD ROE, ELISHA WINN et al., tenants. } *Ejectment.*

To the defendants, or their attorney. Take notice, that on the trial of the above cause, you will be required to produce an original grant from George Matthews, Governor of the State of Georgia, to Basil Jones, for seven thousand three hundred acres of land, in the county of Franklin, bounded northwest by vacant land, northeast by Basil Jones, Collier's and John Cobb's land, southeast by Collier's land, and southwest by Richard Call's and Jones's land. Dated 24th May, 1787.

Also an original power of attorney, from Basil Jones to Thomas Smyth, junior, dated 6th August, 1793, and witnessed by Abram Jones, J. P., and Thomas Harwood, jun., empowering the said Thomas Smyth, jun., to sell, convey, and dispose of five tracts of land in Franklin county, among which was the tract granted by the above described grant.

Also an original deed from J. M. C. Montgomery, tax collector of Jackson county, to Elisha Winn, Elijah Pugh, and Robert Pugh, for all that tract or parcel of land, situate in the county of Jackson, on the Appalachee, in Jackson county (formerly Franklin county), originally granted to Basil Jones, containing seven thousand three hundred acres, more or less, beginning at a black oak corner, thence N. 45, W. 223 chains and fifty links to a black oak, thence N. 45, E. 50 chains to a stake, thence N. 45, W. 107 chains, 25 links to a white oak corner, thence S. 45, W. 55 chains and fifty links to a stake, thence S. 45, E. 223, 50 to a stake, thence N. 45, E. 223 chains, 50 links, to the beginning, joining lands of Cobb and Basil Jones, which, said deed is dated 1st August, 1809, and is witnessed by Hosea Cump, W. Mc Kinney and Harr Thurmond; which said original grant, power of attorney, and deed, are evidence pertinent to the issue, and in case of your failure or refusal to produce the same, the said court will be moved to give judgment against you by default.

RICHARD HENRY WILDE,
Plaintiff's Attorney.

August 27th, 1821.

GEORGIA, *Baldwin county.*

Personally appeared William H. Torrance, esquire, attorney at law, of the town of Milledgeville, in said State, who, being duly sworn, saith that he served a copy of the foregoing notice on Seaborn Jones, esquire, defendants' attorney, on the twenty-fourth day of September, eighteen hundred and twenty one.

WM. H. TORRANCE.

Sworn to before me, this 25th day of September, 1821.

C. B. STRONG,
Judge Sup. C. O. Cir. Georgia.

At a regular sixth circuit court of the United States, for the district of Georgia, held at the court-house, in Milledgeville, on the sixth day of May, A. D. 1822.

Present, the honorable William Johnson and the Hon. J. Cuyler.

Continuance.

DOE, WILLIAM PATTERSON, *vs.* ROE, ELISHA WINN, and others. } *Ejectment No.* 8. *May term*, 1820.

Continued at plaintiff's costs.

At a regular sixth circuit court of the United States, for the district of Georgia, held at the court-house, in Savannah, on the 14th of December, 1822.

Present, Hon. William Johnson and Hon. J. Cuyler.

Continuance.

DOE, EX DEM WILLIAM PATTERSON, *vs.* ROE, ELISHA WINN, and others. } *Ejectment No.* 8. *May term*, 1820.

Continued by consent on terms.

At a regular sixth circuit court of the United States, for the district of Georgia, held at the court-house, in Milledgeville, on Tuesday the sixth day of May, A. D., 1823.

Present, Hon. Wm. Johnson and J. Cuyler.

DOE, EX DEM WM. PATTERSON, *vs.* ROE, ELISHA WINN, and others. } *Ejectment No.* 8. *May T.* 1820.

Jury No. 1. Sworn. 1. Richard M. Morgan, 2. Henry Densler, 3. Isaac Waller, 4. John Rosser, 5. Henry Barrow, 6. John S. Wright, 7. Woodruff Scott, 8. Sterling Bass, 9. Albert G. Beckham, 10. Benjamin Doles, 11. James Bevins, 12. Absolom Beckham.

Witnesses sworn on part of plaintiff: Francis Farrar, Abner Hammond, and Daniel Sturges.

The depositions of Ann M. Smyth and of Andrew Fleming, were read in evidence.

Mistrial.

DOE, EX DEM WM. PATTERSON, *vs.* ROE, ELISHA WINN, and others. } *Ejectment No.* 8. *May term*, 1820.

This cause came on to be tried before the court and jury, sworn, and the court being divided in opinion on the admissibility of the grant offered by the plaintiffs in the above cause, as evidence to the jury, ordered that the jury be discharged from the further consideration thereof.

At a regular circuit court of the United States, for the district of Georgia, begun, and holden in the city of Savannah, on Wednesday, the fourteenth day of December, in the year of our Lord one thousand eight hundred and twenty-five.

Present, the Hon. William Johnson, and Hon. Jeremiah Cuyler.

JOHN DOE EX DEM WILLIAM PATTERSON,
vs.
RICHARD ROE, ELISHA WINN and others, tenants. } *Ejectment.*

Survey.

On motion of plaintiff's attorney, it is ordered that the rules of resurvey, ordered by consent at May term, 1824, and enlarged at December term, 1824, and which have not been executed in consequence of the pendency of the question in relation to grants of more than 1000 acres, in the Supreme Court, be now revived, enlarged, extended, and made returnable to the next term of this court. 21st December, 1825.

At a regular circuit court of the United States, for the district of Georgia, begun and held at the court house, in Milledgeville, on Saturday, the 6th May, 1826.

Present the honorable William Johnson.

DOE EX DEM WILLIAM PATTERSON,
vs.
ROE, ELISHA WINN ET AL., tenants. } *Ejectment.*

Survey.

It is consented by plaintiff's and defendants' counsel, that the surveyor have time allowed him to complete and return his plats of the resurveys in the above case, until the rule day in October next.

R. H. WILDE, *Plaintiff's Attorney.*
SEABORN JONES, *Defendants' Attorney.*

May 8, 1826.

THE SAME,
vs.
THE SAME. } *Ejectment.*

The mandate of the Supreme Court, in this case, was read and ordered to be filed; the case ordered to be docketed. May 8, 1826.

Mandate Supreme Court. Feb. T., 1826.

DOE EX DEM on the demise of WILLIAM PATTERSON,
vs.
ELISHA WINN, and others. } *Mandate.*

This cause came on to be heard on a certificate of division, in opinion of the judges of the circuit court of the United States, for the Georgia district, and was argued by counsel; on consideration whereof, this court is of opinion, and direct it to be certified to the said circuit court, that the evidence offered in the court below by the plaintiffs, and to the competency of which, objection was made, and upon which question the opinions of the judges of said court were opposed, was competent evidence on the part of the plaintiff to sustain the issue on his part.

I, William Griffith, clerk of the Supreme Court of the United States, do hereby certify to the circuit court of Georgia, that the aforegoing is a true

copy of the order of said Supreme Court, made in the above cause, extracted from the minutes of said Supreme Court.

[L. S.] In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, this twenty-fifth day of April, anno Domini, 1826.

WM. GRIFFITH,
Clerk Sup. Court U. S.
G. GLEN, *Clerk.*

Filed 8th May, 1826.

At a regular circuit court of the United States, for the district of Georgia, begun and holden in the city of Savannah, on Monday, the 27th day of November, 1826.

Present, Hon. William Johnson and the Hon. Jeremiah Cuyler.

Continuance.

DOE EX DEM PATTERSON,
vs.
ROE, ELISHA WINN, et al., tenants } *Ejectment.*

Continued by consent.

At a regular circuit court of the United States, in and for the district of Georgia, begun and held at the court-house, in Milledgeville, on Sunday, the 6th day of May, 1827.

DOE EX DEM WILLIAM PATTERSON,
vs.
ROE, ELISHA WINN, and others, tenants. } *Ejectment.*

Survey.

It is consented by the attornies for the plaintiffs and defendants in the above case, that the special rule of resurvey heretofore granted in the above cases, and directed to Edward L. Thomas, shall be extended and made returnable to the next May term of this court, and that time, until that period, be given to the said Edward L. Thomas, to complete his resurvey and make out and return his plat, provided that notice of the time and place, when and where, the said Thomas will enter on the execution of the resurvey, be given to the defendants at least fifteen days, and provided that the said Thomas shall furnish a copy plat to the defendants, at their own expense in each case, by the first day of April, before the said May term.

SEABORN JONES, *Attorney for Dfts.*
R. H. WILDE, *Attorney for Plffs.*

May 18, 1827.

IN THE SIXTH CIRCUIT U. S., *district of Georgia.*

EX DEM W. PATTERSON,
vs.
ELISHA WINN, et al. } *Ejectment.*

Continuance.

It is agreed between the counsel in this cause, that a juror be withdrawn, and that the cause stand continued until the decision of the Supreme Court U. S. in the case ex dem W. Patterson *vs.* Willis, Jenckes et al., on the bill of exceptions to be taken at the present term.

R. H. WILDE, *Attorney for Plaintiffs.*
JONES & HABERSHAM, *Attorney for Defendants.*

May 18, 1827.

At a regular circuit court of the United States, for the district of Georgia, begun and held at the court-house, in the city of Savannah, on Monday, the 26th day of November, 1827. Present, Hon. Jeremiah Cuyler.

Doe, ex dem Wm. Patterson,
vs.
Roe, Elisha Winn, et al., tenants. } *Ejectment.*

Continuance.

Continued by consent.

At a regular circuit court of the United States, for the district of Georgia, held at the court-house, in Milledgeville, on Tuesday, the 6th day of May, 1828.

Present, the Hon. William Johnson and the Hon. Jer. Cuyler.

Ex dem Wm. Patterson,
vs.
Elisha Winn, et al. } *Ejectment.*

Continued by consent.

At a regular circuit court of the United States, for the district of Georgia, begun and held in the city of Savannah, on Monday, 24th day of November, 1828.

Present, the honorable William Johnson and the Hon. J. Cuyler.

Doe, ex dem Wm. Patterson,
vs.
Roe, Elisha Winn, et al. } *Ejectment.*

Continuance.

At a regular circuit court of the United States, for the district of Georgia, begun and held at the court house, in the city of Savannah, on Thursday, the 7th day of May, 1829.

Present, the Hon. William Johnson and the Hon. Jer'h Cuyler.

Continuance.

Doe, em dem Wm. Patterson,
vs.
Roe, Elisha Winn, et al. } *Ejectment.*

Continued by consent.

And now, on this day, that is to say, on the seventh day of November, 1829, being a day of the term of the said court, held in Milledgeville, on the Thursday after the first Monday in November, in the year aforesaid, before the honorable William Johnson and the Hon. J. Cuyler, presiding judges of the said court, came the said parties as follows, to wit:

Verdict.

Doe, William Patterson,
vs.
Roe, Elisha Winn, and others. } *Ejectment.*

Jury sworn. 1. Wilson Pope, 2. Oliver Morton, 3. Henry Porter, 4. William Jordan, 5. James Jones, 6. V. E. Kirkland, 7. Micajah Blackwell,

8. William Rogers, 9. Geo. W. Jennings, 10. Edward W. Miller, 11. Jacob Barrow, 12. Matthew Orm.

R. H. Wilde, Esq., witness for plaintiff, sworn.

Verdict. We find for the defendants with cost of suit.

WILSON POPE, *Foreman.*

DOE, ex dem WM. PATTERSON,
vs.
ROE, ELISHA WINN, and others, tenants. } *Ejectment.*

Survey.

It is ordered by the court that the special rule of resurvey heretofore granted on the eighteenth day of May, eighteen hundred and twenty-seven, in the above cause, and directed to Edward L. Thomas, shall be extended and made returnable to the May term next of this court; and that time, until that period, be given to the said Edward L. Thomas, to complete his resurvey and make out and return his plat; provided, that notice of the time and place, when, and where, the said Thomas will enter on the execution of the resurvey, be given to the defendants, at least fifteen days; and provided, that the said Thomas shall furnish a copy plat to the defendants, at their own expense, if required by the first day of May next, and provided, that this order shall not affect any plats, or resurveys heretofore executed and made returnable in the above causes to this court. November 7, 1829.

Final Judgment for Defendants, November 7, 1829.

SIXTH CIRCUIT COURT UNITED STATES, *district of Georgia.*

DOE, ex dem WILLIAM PATTERSON,
vs.
ROE, ELISHA WINN, and others. } *Ejectment.*

Afterwards, that is to say, on the seventh day of November, in the year of our Lord one thousand eight hundred and twenty-nine, at Milledgeville, before the honorable William Johnson, one of the Justices of the Supreme Court of the United States, come as well the within named John Doe, as the within named Elisha Winn, James Clements, John Berry, jun'r, William Rucks, William Baskin, Benjamin Jackson, Samuel Carruthers, Stephen Nolen, James Nolen, George Nolen, Christopher Addison, William Dobbs, Silas Dobbs, Joel Pricket, David Richardson, Matthias Bates, William Maltbie, Isham Williams, Elijah Tutton, Simeon Berry, James Crawford, John Berry, senior, William Tumlin, Meredith Collier, James Swiny, Sarah Lawson, Joshua Hill, and James Berry, by their respective attorneys, within mentioned, and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters within contained, being tried and sworn, upon their oaths, say, they find for the defendants. Therefore, it is considered, that the said John Doe take nothing by his said writ, but that he be in mercy, &c., and that the said Elisha Winn, and others, defendants above named, do go thereof without day, &c. And it is further considered by the said court, that the said Elisha Winn and others, do recover against the said John Doe dollars, for his costs and charges, by him laid out about his defence, in this behalf, by the said court, now here adjudged to them, and with their assent, and that they have execution thereof.

Judgment signed and filed this seventh day of November, A. D., 1829.

GEO. GLEN, *Clerk.*

At a regular circuit court of the United States, for the district of Georgia, held at the exchange in the city of Savanna, on the sixth day of May, in the year of our Lord eighteen hundred and thirty-one, being a day of the term of the said court, held in said city, on the Thursday after the first Monday in May, in the year aforesaid, before the honorable William Johnson and the honorable J. Cuyler.

Doe, ex dem WM. PATTERSON,
vs.
Roe, ELISHA WINN, et al. } *Ejectment.*

Upon motion of plaintiff's attorney, in the above case, it is *Ordered*, that the mandate of the Supreme Court of the United States, in said cause, be filed in the Clerk's office, and entered upon the records of this court, 6th May, 1831.

Mandate. No. 52.

UNITED STATES OF AMERICA, ss.

The President of the United States of America, to the honorable the judges of the circuit court of the United States for the District of Georgia, greeting:

Whereas, lately, in the circuit court of the United States for the district of Georgia; before you, or some of you, in a cause wherein John Doe, on the demise of William Patterson, was plaintiff, and Elisha Winn, James Clements, John Berry, jun., William Rucks, William Baskin, Ben- [L. S.] jamin Jackson, Samuel Carruthers, Stephen Nolen, James Nolen, George Nolen, Christopher Addison, William Dobbs, Silas Dobbs, Joel Pricket, David Richardson, Mathias Bates, William Maltbie, Isham Williams, Elijah Tutton, Simeon Berry, James Crawford, John Berry, sen., William Tumlin, Meredith Collier, James Sweney, Sarah Lawson, Joshua Hill, and James Berry, were defendants, in ejectment; the judgment of the said circuit court was in the following words, viz.: "Therefore, it is considered that the said John Doe take nothing by his said writ, but that he be in mercy, &c., and that the said Elisha Winn and others, defendants above named, do go thereof without day, &c. And it is further considered, by the said court, that the said Elisha Winn and others do recover against the said John Doe dollars, for his costs and charges, by him laid out, about his defence in this behalf, by the said court, now here adjudged to them and with their assent, and that they have execution thereof," as by the inspection of the transcript of the record from the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears. And whereas, in the present term of January, in the year of our Lord one thou and eight hundred and thirty-one, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel; on consideration whereof, it is considered and ordered by this court, that the circuit court erred in refusing to allow the exemplification of the grant to Basil Jones, mentioned in the record to be read in evidence, as in the exceptions of the plaintiff is mentioned. Whereupon, it is ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby, reversed, and that this cause be and *and* the same is hereby remanded to the said circuit court, with instructions to ward a *veneri facias de novo*.

You, therefore, are hereby commanded that such further proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said writ of error notwithstanding: Witness the honorable John Marshall, Chief Justice of said Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and thirty-one.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Filed in court, May 6, 1833.

G. GLEN, *Clerk.*

And now, on this day, that is to say, on the 15th day of November, in the year of our Lord one thousand eight hundred and thirty-one, being a day of the term of the said court held at Milledgeville on the Thursday after the first Monday in November, in the year aforesaid, before the honorable Jeremiah Cuyler, presiding judge of the said court, came the said parties as follows, to wit:

DOE, ex dem. WM. PATTERSON,
vs.
ROE, ELISHA WINN et al. } *Ejectment.*

Continuance.

At the instance of the defendants, it is ordered that this case be continued until November term, 1832.

And now, on the ninth day of November, in the year of our Lord one thousand eight hundred and thirty, being a day of the term of the said court, held at Milledgeville on the Thursday after the first Monday in November, in the year aforesaid, before the honorable Jeremiah Cuyler, presiding judge of the said court, came the said parties as follows, to wit:

DOE, ex dem. WM. PATTERSON,
vs.
ROE, ELISHA WINN and other, tenants. } *In the Sixth Circuit Court of the United States.*

Continuance.

It is consented by the parties that the above case be continued, at the instance of the plaintiff, till November term, 1833.

November 8, 1832.

SEABORN JONES, *Attorney for defendants.*
J. W. WILDE, *Attorney for plaintiff.*

Trial of cause—November term, 1833.

And now, on the 8th day of November, in the year of our Lord one thousand eight hundred and thirty-three, being a day of the term of the said court, held at Milledgeville on the Thursday after the first Monday in November, in the year aforesaid, before the honorable William Johnson and the honorable Jeremiah Cuyler, presiding judges of the said court, came the said parties, to wit:

WILLIAM PATTERSON,
vs.
ELISHA WINN and others. } *Ejectment.*

Jury sworn, viz: 1. William Logue, 2. Geo. W. Lively, 3. Gabriel Martin,

4. Drury Murphey, 5. E. Johnson, 6. William B. Snipes, 7. William Babb, 8. William White, 9. William Sykes, 10. A. Newsom, 11. Thomas Litle, 12. Alexander Jarratt.

A. Newsom was appointed foreman of Jury No. 1.

Witness for plaintiff sworn—John W. Wilde, Esq.

The counsel for plaintiff and the defendants agree that the jury separate in the intervals of the court.

The court adjourned until 10 o'clock A. M. to-morrow.

Saturday, 9th November, 1833, the court met pursuant to adjournment.

Doe, ex dem. Wm. Patterson,
vs.
Roe, Elisha Winn et al., tenants. } *Ejectment. Jury No.* 1.

It having been proved, to the satisfaction of the court, that Christopher Addison, David Richardson, and Sarah Lawson, defendants in the above case, are dead, on motion, it is ordered, that the suggestion of the death of the said defendants be entered on the minutes of this court. 9th Nov., 1833.

Court adjourned until Monday next, 11th November, at 10 o'clock, A. M.

The court met according to adjournment on Monday the 11th Nov., 1833.

Present, honorable Wm. Johnson and J. Cuyler.

Doe, ex dem. Wm. Patterson,
vs.
Roe, Elisha Winn and others. } *Ejectment. Jury No.* 1.

The evidence, on the part of the plaintiff, closed, and the defendants' counsel stated that they had no evidence to adduce. Mr. Berrien argued the cause for plaintiff, and Mr. Jones, for the defendants, commenced his argument.

The court adjourned until 9 o'clock A. M. to-morrow.

On Tuesday, the 12th November, 1833, the court met pursuant to adjournment. Present, the hon. William Johnson and the hon. Jeremiah Cuyler.

Doe, ex dem. Wm. Patterson,
vs.
Roe, Elijah Winn et al. } *Ejectment. Jury No.* 1.

Mr. Jones continued his argument on part of the defendants, and concluded this day.

The court then adjourned until 9 o'clock A. M. to-morrow.

On Wednesday, 13th November, 1833, the court met, pursuant to adjournment. Present, the hon. Wm. Johnson and the hon. J. Cuyler.

Doe, ex dem. Wm. Patterson,
vs.
Roe, Elisha Winn et al., tenants. } *Ejectment. Jury No.* 1, *viz.*

1. A. Newsom, 2. William Logue, 3. Geo. W. Lively, 4. Gabriel Martin, 5. Drury Murphey, 6. E. Johnson, 7. William B. Snipes, 8. William Babb, 9. William White, 10. William Sykes, 11. Thos. Litle, 12. Alexander Jarratt.

Verdict.

We find for the plaintiff, with costs of suit.

A. NEWSOM, *Foreman*

Final Judgment for plaintiff, at November term, 1833.

Sixth circuit court United States, district of Georgia.

JOHN DOE ex dem. WM. PATTERSON,
vs.
ROE, ELISHA WINN et al., tenants. } *Ejectment.*

Final Judgment.

Afterwards, to wit, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and thirty-three, before the justices of the sixth circuit court of the United States for the district of Georgia, in the said court, came as well the within named John Doe as the within named Elisha Winn, William Maltbie, Isham Williams, Simeon Berry, John Berry, jr., John Berry, sen., William Rucks, James Crawford, James Clement, William Baskin, James Nolen, George Nolen, Stephen Nolen, Samuel Carruthers, Joshua Hill, Meredith Collier, Benjamin Jackson, James Swiney, William Dobbs, Silas Dobbs, Joel Pricket, James Berry, Matheas Bates, William Tumlin, and Elijah Tutton, who have survived the within named Christopher Addison, Sarah Lawson, and David Richardson, by their attorneys aforesaid, and the jurors of the jury whereof mention is within made being summoned, also come, who, to speak the truth of the within contained, upon their oath say, they find for the plaintiff, with cost of suit. Therefore, it is considered, that the said John Doe do recover against the said Elisha Winn, William Maltbie, Isham Williams, Simeon Berry, John Berry, jun., John Berry, sen., William Rucks, James Crawford, James Clement, William Baskin, James Nolen, George Nolen, Stephen Nolen, Samuel Carruthers, Joshua Hill, Meredith Collier, Benjamin Jackson, James Swiney, William Dobbs, Silas Dobbs, Joel Pricket, James Berry, Mathias Bates, William Tumlin, and Elijah Tutton, (survivors as aforesaid,) his said term yet to come of and in the said premises, in the said declaration mentioned, in the possession of the said Elisha, William, Isham, Simeon, John, John, William, James, James, William, James, George, Stephen, Samuel, Joshua, Meredith, Benjamin, James, William, Silas, Joel, James, Mathias, William, and Elijah, respectively, with the appurtenances, wherein the said defendants are, by the jurors aforesaid above, found to be guilty of the trespass and ejectment aforesaid, and also his costs aforesaid, by the court now here adjudged of increase to the said John Doe, with his assent, which costs amount to the sum of and be the said defendants, in mercy, &c. And, hereupon, the said John Doe prays a writ of habere facias possessionem, to be directed to the marshal of the United States for the district of Georgia, to cause him to have possession of his term yet to come, of and in the tenements aforesaid, with the appurtenances, and it is granted to him, returnable before the judges of the sixth circuit court of the United States for the district of Georgia, on the Thursday after the first Monday in May next. Judgment signed and filed 13th Nov., 1833.

GEO. GLEN, *Clerk.*

DOE ex dem. WM. PATTERSON,
vs.
ROE, ELISHA WINN, et al., tenants. } *Ejectment.*

Order.

On motion of plaintiff's counsel it is ordered, that he have leave to take out his writ of possession on the rule day in January next, unless the de-

fendants shall supersede the same in the interim, by filing their writ of error. 13th Nov., 1833.

Certificate. Division in opinion on first Trial.

Certificate of the division in opinion of the judges in May term, 1823, omitted at page 14, in the foregoing transcript.

Doe ex dem. William Patterson,
vs.
Roe, Elisha Winn, et al., tenants. } *Ejectment.*

In the progress of the trial of this cause, the plaintiff, to maintain his action, offered in evidence a patent, purporting to be a grant in due form of law from the State of Georgia, to one Basil Jones, for 7,300 acres of land, including the premises, and also the warrant of survey upon which the said tract of land was laid off and surveyed, copies of which patent, warrant, and survey, and of the minutes of the court which granted the warrant, are hereunto attached. He further offered evidence to prove, that it was the practice of the said courts to consolidate several warrants in one, and authorize them to be surveyed in one tract.

The defendant then objected to the said grant going to the jury, affirming the same to be void in law, inasmuch as no grant could issue under the laws of the State for so great a number of acres as are comprised in the said grant. On which question, so made and argued, the court are divided in opinion. Whereupon the same is ordered to be certified to the Supreme Court. And forasmuch as the court is of opinion, that the cause cannot further proceed, the jury is discharged from the further consideration thereof: and, at the particular instance of the defendant, the court further certifies, that, in order to rebut the signification of the words in the warrant of survey, "bounty reserve," he offered evidence to prove that grants issued on surveys made on bounty warrants had the words "on bounty" written on the face of the grant.

WILLIAM JOHNSON.
J. CUYLER.

May 12, 1823.

United States of America, *District of Georgia, ss.*

I, George Glen, clerk of the circuit court of the United States, for the district of Georgia, do hereby certify, that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the cause therein mentioned, taken from and by me, carefully compared with the originals filed and being of record in my office.

In witness whereof, I have hereto set my hand and affixed the seal of the said circuit court, this first day of January, in the year of [seal.] our Lord one thousand eight hundred and thirty-four.

GEO. GLEN, *Clerk.*

United States of America, *District of Georgia, ss.*

I, Jeremiah Cuyler, judge of the district court of the United States for the district of Georgia, do hereby certify, that George Glen, who signed the within certificate, is, and was, at the time of signing the same, the clerk of the district and circuit courts of the United States for the district of

Georgia; that full faith and credit ought to be given to his acts and attestations as such, and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof, I have hereto set my hand this first day of January, in the year of our Lord 1834.

J. CUYLER, *D. J.*

Sixth circuit court U. S., Geo. district, November term, 1833.

DOE ex dem. WM. PATTERSON,
vs.
ROE, ELISHA WINN, and others, defendants. } *Ejectment.*

Bill of exceptions.

Which said issues in manner aforesaid, joined between the parties, plaintiff and defendants, afterwards, to wit, at the November term, in the year of our Lord one thousand eight hundred and thirty-three, before the justices of the said sixth circuit court, holden at Milledgeville, in the district of Georgia aforesaid, before the justices of the said court, came on to be tried; at which day came as well the said plaintiff, by his attorney, as the said defendants, by their attorneys aforesaid; and the jurors of the jury whereof mention is within made, being called likewise, came, and were sworn to try the said issue in manner aforesaid joined; and, thereupon, to maintain the issue above joined, the said plaintiff, by his attorney aforesaid, then and there gave in evidence to the jury so empannelled and sworn as aforesaid, a copy of a grant from the State of Georgia to Basil Jones, for seven thousand three hundred acres, bearing date on the twenty-fourth day of May, seventeen hundred and eighty-seven, together with a plat of survey of the said land thereto annexed (copy of which plat and grant, marked exhibit A, is hereto annexed.) And the said plaintiffs further offered to give in evidence to the said jury a paper writing, purporting to be a copy of a power of attorney from Basil Jones to Thomas Smyth, junior, which is in the words following, to wit:

Richmond county, Georgia, sct. } JONES *to* SMITH.

Know all men, by these presents, that I, Basil Jones, of Columbia county, and State of Georgia, have made, ordained, constituted, and appointed, and by these presents do irrevocably make, ordain, constitute, and appoint Thomas Smyth, junior, late of Maryland, my true and lawful attorney, for me, and in my name, to sell, convey, and dispose five certain tracts or parcels of land, situated, lying, and being in Franklin county, State of Georgia, aforesaid, to wit: one tract containing seven thousand one hundred and sixty acres; one other tract containing seven thousand three hundred acres granted to me by his excellency the Governor of Georgia, on the 24th day of May, in the year one thousand seven hundred and eighty-seven; also, one tract containing one thousand acres, granted to Samuel Lamkin; one other containing nine hundred and fifty acres, granted to Henry Evans; and one other, containing eight hundred acres, granted to Ambrose Jones, hereby obliging myself, my heirs and executors, to ratify and confirm whatever my said attorney may do in the premises; giving him also power to appoint one or more attorney

or attornies, with the same power hereby vested in him by me. Witness my hand and seal, this sixth day of August, one thousand seven hundred and ninety-three.

B. JONES. [L. S.]

Signed, sealed, and delivered in the presence of
ABRAM JONES, *J. P.*
THOMAS HARWOOD, junior.

On which said paper was also written a certificate of John H. Mann, clerk of the superior court of Richmond county, in the words following, to wit:

Clerk's office, Superior Court.
GEORGIA, *Richmond county.*

I certify the foregoing to be a true copy from the record of this office, as entered in book E, folios 336 and 337, the 11th day of July, 1795.

Given under my hand and the seal of the said superior court
[L. S.] this 21st day of May, 1819.

(Signed) JOHN H. MANN,
Clerk Richmond Sup. Court.

And also, the following certificate, by the honorable the then judge of the said superior court, State of Georgia, Richmond county.

By the honorable John H. Montgomery, one of the judges of the superior court, of the State aforesaid.

Be it known, that John H. Mann, who certifies the foregoing, and whose signature appears thereto, is, and was at the time of signing thereof, clerk of the superior court of Richmond county aforesaid; that full faith and credit are due his signature, as such; and that his said attestation is in due form and by the proper officer.

Givenunder my hand and seal, this 21st day of May, A. D. 1819.

JOHN H. MONTGOMERY. [SEAL.]

And also a certificate in due form, and by the proper officer, under the seal of the said court, that the said John H. Montgomery was, at the time of the signing of the said certificate, one of the judges of the superior courts of the State of Georgia.

And to account for the loss of the original power of attorney and paper, of which the foregoing purported to be a copy, the plaintiff read before the said justices of the said court, an affidavit of William Patterson, the lessor of the plaintiff, wherein the said William deposeth, that he had not in his possession, power, or custody, an original power of attorney, *of attorney*, from Basil Jones to Thomas Smyth, jr., dated the sixth day of August, in the year seventeen hundred and ninety three, and witnessed by Abram Jones, J. P. and Thomas Harwood, jr., authorizing and empowering the said Thomas Smyth, jr. to sell and dispose of five tracts of land in Franklin county, Georgia, among which was the tract including the premises in dispute, in the case of Doe *ex dem.* of William Patterson *vs.* Roe, Elisha Winn, and others, tenants, containing seven thousand, three hundred acres, situate, at the time of survey, in the county of Franklin, in the State of Georgia, and butting and bounding northwest by vacant land, northeast by Basil Jones, Collier, and John Cobb's land; southeast by Collier's land, and southwest by Richard Call's

land and Jones' land, originally granted to Basil Jones, on the twenty-fourth day of May, one thousand seven hundred and eighty-seven; and he further deposes, that he has not in his possession, power, or custody, the original grant for the said seven thousand three hundred acres of land to the said Basil Jones above described; and that he verily believes that the said original power of attorney and grant, have been lost or destroyed; which affidavit is dated the twenty-third of July, eighteen hundred and thirty three. And further, to account for the loss of the original power of attorney, of which the foregoing purports to be a copy, and to show due diligence in searching for the same, the said plaintiff's attorney read in his behalf, a deposition made by one Andrew Fleming on the twenty-second day of June, eighteen hundred and twenty-one, in which the said Andrew Fleming deposeth as follows, to wit:

That, in October, 1817, he, the deponent, had some business in Georgia, and Mrs. Anna M. Smyth, understanding the deponent's business laid in Augusta, in the said State, authorized deponent with full powers, as her proper agent, to receive all the papers and documents belonging to the estate of her deceased husband, Major Thomas Smyth, deposited by him in the hands of Col. Samuel Hammond, of South Carolina, as assignee, for the bennefit of the creditors of said Thomas Smyth. Mrs. A. Smyth, about the same time, put into deponent's hands, two letters to deliver to Mr. William Grant, of South Carolina; the one from Col. Samuel Hammond, then residing in St. Louis, to his friend Mr. William Garrett; the other to Mrs. Anna M. Smyth, introducing deponent as her proper agent.

It was not until the latter end of October, 1817, that deponent saw the aforesaid Mr. Garrett, at his brother's house, who also resided in South Carolina, where deponent delivered both letters to William Garrett, who read aloud that part of Col. Samuel Hammond's letter that related to the delivery of the papers and documents left by the deceased Major Thomas Smyth, in his hands, as assignee. William Garrett then informed deponent, that, although he was appointed executor for the estate of Le Roy Hammond, with whom the aforesaid papers and documents were left by Col. Samuel Hammond, he, William Garrett, had never examined any papers left by Le Roy Hammond, but gave deponent an open letter to the widow of Le Roy Hammond, requesting her to allow deponent to search for and examine all the papers in her possession, for those of the late Major Thomas Smyth; also, to take a proper receipt for those delivered to deponent. The widow of Le Roy Hammond complied with the request of William Garrett, in showing deponent all of the papers and documents in her possession, and not only assisted herself, but called in two of her kinsmen to aid in the search for the said papers and documents; after a fruitless search, not the smallest scrap of paper or parchment with Major Thomas Smyth's name on it was to be found. Deponent suggested to Mrs. Le Roy Hammond that Col. Samuel Hammond had said to a Mr. Van Zant, of the city of Washington, in a conversation with him on the subject of Mrs. A. M. Smyth's affairs, that they, the papers and documents, were left in a small sulkey box. On deponent's mentioning the box, Mrs. L. R. Hammond stated to deponent, that she perfectly recollected the circumstance of a small box being brought out of the fodder-house (where it had been kept) by a relation of her husband's about three years ago; and that the reasons for the young man, her husband's relative, bringing in said sulkey box from the fodder-house was for the purpose of obtaining the box from Col. Le Roy Hammond, as

he, the young man, was going to camp, and wanted said sulkey box to carry with him. Mrs. Le Roy Hammond further informed this deponent, that Col. Le Roy Hammond was sitting in the piazza when the sulkey box was opened; and, on his examining the state of the papers and documents therein contained, said it was a very great pity that the rats had destroyed those papers, as they were of great value to his relation, Colonel Samuel Hammond; and gave the box containing the gnawed fragments to the young man to carry to camp with him.

And this deponent saith, that the said young man told him, this deponent, in the presence of Mrs. Le Roy Hammond, and also in the presence of a man by the name of Hammond, said to be a son of Colonel Samuel Hammond, that he took and emptied the scraps out of the box into the yard, and that he knows nothing more about them. Deponent finding that the papers were not to be found, and believing the statements of Mrs. Le Roy Hammond and the young man, whose name deponent does not now recollect, he, the deponent, being unable to collect from the parties before mentioned any other information than the total destruction of the papers and documents, begged the favor of the letter from Col. S. Hammond to Wm. Garrett, as evidence of the papers and documents belonging to the estate of the deceased Major T. Smyth, having been deposited by him in the hands of Col. Samuel Hammond, as assignee. Deponent further saith, that Mrs. Le Roy Hammond put the letter of Col. Samuel Hammond to Mr. Wm. Garrett into his, the deponent's hands, as also that of Mr. Garrett to Mrs. Le Roy Hammond, both of which originals this deponent hath taken care of. Some time after the investigation for the papers and the delivery of the two letters aforementioned, Mrs. Le Roy Hammond despatched the young man who, as before mentioned, emptied the scraps out of the box, to the deponent, then pursuing his business in Augusta, Georgia, for the letters which she had given to him, deponent; stating that Mr. Wm. Garrett was very angry with her for giving them, alleging that the deponent had no further need of them: deponent did not deliver the letters, but brought them with him to Washington, or sent them to that place by mail; does not recollect whether they were sent by mail for the perusal of Mrs. Anna M. Smyth. And the deponent saith, that he took true copies of both the letters beforementioned. And the deponent saith, that about the middle of February, 1818, he forwarded the said originals of the two letters to his particular friend in Charleston, S. C., Francis D. Quash, inquiring his advice, and desiring Mr. Quash to address Mr. Gresham Smyth, near Coosahachee, son of the deceased Major T. Smith, on the subject; the deponent, thinking it presumable, said G. Smith, knew something of where the lands were recorded. And the deponent saith, the originals of the two letters are still in safe keeping with Mr. Francis D. Quash, in Charleston; and further he saith not.

And further, to account for the loss of the original power of attorney, of which the foregoing purports to be a copy, and to show due diligence in searching for the same, the said lessor of the plaintiff, by his attorney, read in his behalf, the answers and depositions of Anna M. Smyth, who deposes that she was the widow of Major Thomas Smyth, deceased; that the places of residence of the said Thomas had been irregular; that he had been engaged in speculation in Georgia land, and was in Georgia previously to his marriage with the deponent; that, after his engagement to be married to her, she then living in Chester, in Maryland, he returned again to Georgia; he returned to Georgia in the autumn, whence he came back to Chester, where

they were married in December, but in what year she was married she does not remember. That, three weeks after the marriage, she went with the said Thomas to Georgia, where they lived three months, in Augusta; that they then went to Charleston, South Carolina, whence they embarked for Philadelphia, and from thence returned to Maryland, where they remained about two years, and then returned to Georgia, where they lived about nine months then went to Charleston, and embarked for England. That they lived in England going on four years, where said Thomas endeavored to dispose of southern lands, which was his only object in going to England; from thence they returned to Savannah, in Georgia, and from thence to Augusta, where they remained to the last of August; then returned to Maryland, from whence the said Thomas made one or two trips to Georgia, where he surrendered his papers to an assignee, for the benefit of his general creditors. That he then returned to the District of Columbia, where he received a public appointment and fixed his residence, and there died about the year eighteen hundred and seven. That, when the said Thomas left deponent in England, he was absent about fifteen months. She further deposeth, that the said Thomas's pursuits in Georgia were land speculations and commercial pursuits, for she knew that he had a mercantile concern and store of goods in Augusta. That she recollects, she thinks, seeing such a man as Basil Jones there; that she is not certain, but believes, a man of that name was engaged with her husband in some business about mills; that she has not been, since her husband's death, in possession of any papers of his relative to the sale of Georgia lands; she does not know whether he left any such papers, and concludes that he left none such, or she must have seen them, as no person administered upon his estate, and she had possession of all his effects after his death. That she had been informed by Col. Samuel Hammond, at the date of her deposition, of St. Louis, Missouri, that a deposit of such papers was made with him by her husband in Georgia, and that the said papers related to southern lands; said Hammond being the assignee, as above stated; and that she has further been informed that the said papers were handed over by said Hammond to Le Roy Hammond, of South Carolina, in whose possession she had been told they were destroyed by rats. The above deposition is dated on the twentieth of June, eighteen hundred and twenty-one.

And further, to account for the loss of the said original power of attorney, and to show due diligence in searching for the same, the said lessor of the plaintiff read in his behalf the answers of Richard H. Wilde, esq., to certain interrogatories which were proposed on behalf of the plaintiff's lessor, wherein the said Richard H. Wilde deposed as follows: that, on examining William Patterson's title papers to the lands in dispute, he remembers deeming it necessary to obtain the original power of attorney alluded to above, if in existence; that, being the agent of the plaintiff, he made various searches and inquiries; that the power purported to be recorded in the clerk's office of the superior court of Richmond county, Georgia; that, in his various examinations of papers there, he had observed that many original papers left there to be recorded, remained for years, and, therefore, made search personally among the deeds and other papers of that description then in the office for said power, but unsuccessfully; that, with the assistance of the clerk, he searched the whole office, and one or the other opened every bundle of papers, they working together, and examined it. That they were some days employed, always working together, but after

going through the whole papers in the office, the said original power was not to be found. That he applied to Mrs. Ann Farrar, formerly the wife of Basil Jones, who gave the power, and who, since his death, had intermarried with one Francis Farrow, and he also applied to the said Francis for the said original power of attorney, and also for a certain other original grant, but was assured that they had no such papers; he then applied to Gresham Smyth, the reputed son of said Thomas Smyth, junior, who replied that his father died when he was young, and that he had no such paper nor any papers of his father's in his charge or keeping; he then advertised in two newspapers in Georgia for some months, making inquiry for said original power of attorney, and annexes to his answers one of the gazettes containing such advertisement. That nothing very important in the way of information came to him in consequence of such advertisement, nor did it bring him the said original power, or any clue to the discovery of it. That, during one of his visits to Milledgeville, he made diligent inquiry at the office of secretary of state, where at one time powers of attorney were to be recorded, but was told that there were no original powers of attorney in that office. That he was led to conjecture, from papers in his possession, that the title papers of Mr. Patterson had been once in possession of George Walker, esquire, of Richmond county, Georgia, as said Walker had given to Patterson some opinion as to the operation of the tax acts on lands in Georgia, but the said George Walker had been dead many years. Deponent called on Freeman Walker, esq., the brother of George, since dead, who had possession of his brother George's papers, and was permitted to examine said George's papers, among which, after a laborious search, the said power of attorney could not be found. That Basil Jones formerly resided in Columbia county; that deponent searched the clerk's office of that county among the deeds and other original papers of that description therein remaining, but without finding said original power; says that the copy of the power annexed to or enclosed with the deposition of the late William Robertson, formerly clerk of Richmond superior court, taken in the above cause, he knows the paper so appended or enclosed, and is enabled to identify it, and to say that it is a true copy from the record of deeds in the clerk's office of the superior court of Richmond county, he having compared it with the record, and it was for the original of that instrument that his searches and inquiries were made as above stated. The advertisement referred to in Richard H. Wilde's deposition above, was also read as follows, to wit:

Lost. An original power of attorney from Basil Jones, of Columbia county, Georgia, to Thomas Smyth, junior, late of Maryland, dated 6th August, 1793, and authorizing the said Smyth to sell and convey five tracts of land therein mentioned, after much inquiry cannot be found among the parties in whose possession it would naturally be presumed to remain. It is supposed to be destroyed by accident, but may have fallen into the hands of those to whom it is useless. Any information which may lead to the discovery of the original paper, if in existence, or to satisfactory proof of its destruction, if destroyed, will be gratefully acknowledged, and, if necessary, duly rewarded, on application to Richard H. Wilde.

And the said plaintiff further offered in *in* evidence the testimony of John H. Wilde, esquire, who, being duly sworn *sworn*, testified that Abraham Jones, whose name appeared as one of the witnesses to the said power of attorney, was, by public reputation, dead long since; and that he, the witness, had compared the copy of the power of attorney now offered in evidence

with the copy of record in the clerk's office of Richmond superior court, and that it was a true copy; the witness also testified that William Patterson had never been in Georgia, as he believed. And the said lessor of the plaintiff further read in evidence the depositions of William Robertson, taken in the said cause, who deposed that he was deputy clerk and acted as such, of Richmond county, in the year 1794, and clerk of the said court in 1795, and continued in that office till eighteen hundred and eight or nine; that he was well acquainted with Abraham Jones, esq., and his hand writing during the years 1793, 1794, and 1795, and before and afterwards. The deponent further states that the record of a power of attorney from B. Jones to Thomas Smyth, junior, made by himself while clerk of that court, is a copy of an original power of attorney which he believes to have been genuine, for that the official signature of Abraham Jones must have induced him to commit the same to record; and that the copy of said power of attorney transmitted with deponent's depositions has been compared by himself with the record of the original made by himself in Richmond county, and is a true copy.

And thereupon the said plaintiff's attorney offered the said paper writing purporting to be a copy of the said power of attorney, and which is above hereinbefore set forth in evidence in his behalf, to prove the contents and execution of the said original power of attorney alleged to have been lost or destroyed as aforesaid, whereupon the said defendants, by their attorneys aforesaid, interposed and insisted that the said paper writing purporting to be the copy of the power of attorney as herein before set forth was not good or admissible in law upon the issue aforesaid, and insisted upon the following grounds in objection:

First. That the paper writing offered is but the copy of a copy.

Second. That Abraham Jones, J. P., and Thomas Harwood, junior, purport to be the subscribing witnesses to the said alleged original power of attorney, and that there is no evidence to account for the absence of Thomas Harwood, and no evidence can be received to prove the hand writing of the other witness Abraham Jones, until Harwood has been proved to be dead or without the jurisdiction of the court.

Third. That there is no proof of the hand writing of Abraham Jones, the other subscribing witness, or of Harwood.

Fourth. That when by law more than one witness is requisite to a deed, and the witnesses are dead or beyond the jurisdiction of the court, the hand writing of both witnesses must be proved.

Fifth. That there is no proof of the existence of a genuine power of attorney, or of its execution.

Sixth. That by the law of the State of Georgia, deeds of bargain and sale and powers of attorney to convey land must be executed in the presence of two witnesses, and have a seal affixed to the name of the feoffer, and must be recorded in the county where the lands lie.

Seventh. That recording a deed for land or power of attorney in any other county than the one in which the land lies, gives to it no additional validity or authenticity.

Eighth. That the lands conveyed in the deed and contained in the power of attorney lie in the county of Franklin, and none of them in the county of Richmond, where the power of attorney was recorded.

Whereupon, the attorney for the said lessor of the plaintiff, further to prove that the said original power of attorney was executed and made as

purported by the said paper writing, and further to maintain the issue joined as aforesaid, between the said parties, gave in evidence to the said court and to the jury so empannelled and sworn as aforesaid, a deed executed by Thomas Smyth, junior, as attorney in fact of Basil Jones, bearing date on the eighteenth day of November, one thousand seven hundred and ninety three, whereby the said Thomas Smyth, junior, alleging himself to be the attorney in fact of the said Basil Jones, conveyed to the said William Patterson, his heirs and assigns, a tract of land containing seven thousand three hundred acres, situate in Franklin county, Georgia, originally granted to the said Basil Jones on the twenty-fourth day of May, in the year one thousand seven hundred and eighty-seven; which said tract of land is described by the metes, bounds, courses, and distances particularly specified in the plat annexed to the grant of the same.

And which said deed also conveyed, or purported to convey four other tracts of land situate in said Franklin county, and which said deed contains, among other things, the following recital, to wit: Whereas the said Basil Jones, by a certain writing or letter of attorney, dated the sixth day of August last past, did empower and authorize the said attorney, (Thomas Smyth, jr.) in his, the said Basil Jones' name, to sell and dispose of five certain tracts or parcels of land hereinafter mentioned, situate in Franklin county, and State of Georgia aforesaid," (a copy of which said deed, marked exhibit B, is hereto annexed.) And the said plaintiff also offered in evidence proof, to show that the said Abram Jones, J. P., who purported to have subscribed the said original power of attorney as a witness, was a justice of the peace, of the county of Richmond, at the time of the alleged date of the said alleged original power of attorney, which was admitted to be the fact by the attorney for the defendants, whereupon the attorney for the plaintiff again insisted upon the said paper writing hereinbefore set forth, and purporting to be a copy of the said alleged original power of attorney, being permitted to go in evidence before the jury, as aforesaid; and the attorney for the defendants again insisted upon the objections before insisted upon before the said justices, and hereinbefore set forth at large, and insisted thereupon, that the said paper writing so offered to be given in evidence by the said plaintiff, to the jurors aforesaid, was not good or admissible in law, upon the issue aforesaid.

But the said justices held and affirmed, that the said paper writing so offered in evidence, as aforesaid, was admissible in law, and thereupon the said plaintiff gave in evidence to the jury aforesaid the said paper writing hereinbefore set forth, and purporting to be a copy of the said alleged original power of attorney from Basil Jones to the said Thomas Smyth, jr., and the said justices by their direction to the said jury, according to their opinion, left the consideration thereof to the jurors aforesaid; whereupon the attorney of the said defendants conceiving, by the law of the land, the paper writing aforesaid, so as aforesaid given in evidence to the said jurors by the said plaintiff, was not admissible in law upon the said issue, made their exceptions to the said opinion of the said justices.

And the said lessor of the plaintiff, by his said attorney, further to maintain the issue in the said cause, in behalf of the plaintiff, offered in evidence before the said jurors, a plat of re-survey, made by Edward L. Thomas and Isaac S. Vincent, an assistant surveyor, a copy of which marked, exhibit C, is hereto annexed. And further, the said plaintiff introduced before the said jurors as witnesses, the said Edward L. Thomas and Isaac S. Vincent,

and also Joseph Thompson, to prove the identity of the said land in dispute between the parties, and that the defendants were in possession of so much of the said land as lies on the east and north of the Appalachee, or south fork of the Oconee river, and who also proved that the stream in the original plat, marked "Branch of the south fork of the Oconee river," was and is the south fork of the Oconee river itself, otherwise called the Appalachee river; and that a large part of the land covered by the original plat and grant to Basil Jones, the grantee, lay on the south and west side of the said south fork of the said Oconee river, otherwise called Appalachee; and that the said land which lay on the south and west of the said Appalachee river was not at the time of issuing the said grant situate in the county of Franklin, as the grant purported it to be, but was without the then county of Franklin, and beyond the then temporary boundary line of the State of Georgia. Whereupon the attorney for the said defendants prayed the said justices to instruct the said jury, that if the jury believed that Basil Jones, the deputy surveyor and grantee, under whom the lessor of the plaintiff claims, by designating the stream marked in the original plat as "The branch of the south fork of the Oconee river, instead of the south fork of the Oconee river, and by stating that the land was situate in the county of Franklin, when a large part of it lay without the county of Franklin, and without the temporary boundary line of the State of Georgia, practised a deception upon the governor of the State, and thereby induced him to issue the grant; that such grant is fraudulent and void, and cannot entitle the plaintiff to recover; which instruction the said justices refused to give to the said jurors. And the said attorney further prayed the said court to instruct the said jurors, that a grant of land is an entirety, and that a grant void in part is void for the whole," which instruction the said justices also refused to give to the said jurors. And they further prayed the said court to instruct the said jurors.

That a concealment or misrepresentation of material facts, calculated to deceive the governor issuing the grant, renders the grant null and void in law; which instruction the said justices also refused to give to the said jurors, and the jurors gave their verdict against the said defendants, upon the issue aforesaid.

And inasmuch as the matters aforesaid do not appear by the record of the verdict aforesaid, the said attorneys, on behalf of the said defendants, prayed that the said justices would set their hands and seals to this bill of exceptions, containing the several matters so proved and given in evidence as aforesaid, according to the forms of the law in such case made and provided. And, thereupon, the said justices have hereunto set their hands and seals respectively, this fifteenth day of November, in the year of our Lord one thousand eight hundred and thirty three, at Milledgeville aforesaid.

WILLIAM JOHNSON, [L. S.]
J. CUYLER, [L. S.]

[*See Exhibit A.*]

GEORGIA, *Franklin county.*

Warrant from Benjamin Cleaveland, Esq , J. P. &c. *dated Sept. 5th,* 1786, and surveyed 12th September, 1786, by Basel Jones, D. S.

JNO. GORHAM, *C. Sur.*

MILLEDGEVILLE, SURVEYOR GENERAL'S OFFICE,
November 14*th*, 1833.

The above is a true copy from book K, page 258.

JOHN BETHUNE, *Sur. Gen'l.*

STATE OF GEORGIA.

By the honorable George Matthews, esquire, captain general, governor and commander in chief in and over the said State.

To all to whom these presents shall come, greeting:

Know ye, that in pursuance of the act for opening the land office, and by virtue of the powers in me vested, I have, by and with the advice and consent of the honorable the executive council, given and granted, and by these presents, in the name and behalf of the said State, do give and grant unto Basel Jones, his heirs and assigns for ever, all that tract or parcel of land, containing seven thousand three hundred acres, situate, lying and being in the county of Franklin, in the said State, and butting and bounding northwest by vacant land, northeast by Basel Jones's, Collier's, and John Cobb's land, southeast by Collier's land, and southwest by Richard Call's and Jones's land, having such shape, form, and marks as appear by a plat of the same hereunto annexed, together with all and singular the rights, members, and appurtenances thereof whatsoever to the said tract or parcel of land belonging, or in any wise appertaining; and also all the estate, right, title, interest, claim, and demand of the State aforesaid, of, in, to, or out of the same: to have and to hold the said tract or parcel of land, and all and singular the premises aforesaid, with their and every of their rights, members, and appurtenances, unto the said Basel Jones, his heirs and assigns, to his and their own proper use and behoof for ever, in fee simple.

Given under my hand in council, and the great seal of the said State, this twenty-fourth day of May, in the year of our Lord one thousand seven hundred and eighty-seven, and in the eleventh year of American Independence.

Signed by his honor the governor, in council, the 24th day of May, 1787.

J. MERIWETHER, C. C.

Registered 5th June, 1787.

SECRETARY OF STATE'S OFFICE,
MILLEDGEVILLE, 15*th November*, 1833.

The within is a true copy from the register of grants in this office, book N. N. N., page 380.

E. HAMILTON, *Sec'y of State.*

Compared with the copy, grant, and plot produced in evidence.

J. W. WILDE, *Plaintiff's Attorney.*

November 15, 1833.

[*See Exhibit B.*]

This indenture, made this eighteenth day of November, in the year of our Lord one thousand seven hundred and ninety-three, between Basil Jones, of Columbia county and State of Georgia, by Thomas Smyth, junior, late of

the State of Maryland, his attorney, of the one part, and William Patterson, of Baltimore town, Maryland, merchant, of the other part. Whereas the said Basil Jones, by a certain writing or letter of attorney, dated the sixth day of August last past, did empower and authorize his said attorney, in his the said Basil Jones's name, to sell and dispose of five certain tracts or parcels of land hereinafter mentioned, situate in Franklin county and State of Georgia aforesaid. And whereas the said Thomas Smyth, junior, on behalf of his said constituent, hath agreed to sell and convey the said five tracts or parcels of land to the said William Patterson, for the consideration hereinafter mentioned. Now this indenture witnesseth, that the said Basil Jones, by his said attorney, for and in consideration of the sum of five thousand six hundred and twenty-five pounds, current money of Maryland, to him in hand paid by the said William Patterson, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said William Patterson, his heirs and assigns, all those five tracts or parcels of land, situate in Franklin county aforesaid, to wit: one tract containing seven thousand one hundred and sixty acres; one other tract containing seven thousand three hundred acres; both granted to the said Basil Jones on the twenty-fourth day of May, one thousand seven hundred and eighty-seven. Also one tract containing one thousand acres, granted to Samuel Lambkin on the 14th of November, in the year of our Lord one thousand seven hundred and ninety-two; one tract containing nine hundred and fifty acres, granted to Henry Evans, on the fourteenth of November, in the year of our Lord seventeen hundred and ninety two; one other tract containing eight hundred acres, granted to Ambrose ———, on the fourteenth of November, in the year of our Lord seventeen hundred and ninety two; which said five tracts or parcels of land are described by the metes, bounds, courses, and distances particularly specified in their respective plats, which are annexed to the grants of the same, as will more fully appear by reference thereto; together with all woods, ways, waters, water courses, privileges, advantages, hereditaments, and appurtenances to the above mentioned five tracts of land belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof; and also the estate, right, title, interest, property, claim, and demand of him, the said Basil Jones, of, in, or to the aforesaid five tracts or parcels of land, and every part and parcel thereof; to have and to hold all and singular the five tracts or parcels of land aforesaid, with the premises and appurtenances, and every part and parcel thereof, to the said William Patterson, his heirs and assigns, to the only proper use and behoof of the said William Patterson, his heirs and assigns, and for no other use, benefit, or intent whatsoever. And the said Basil Jones, for himself and his heirs, by his attorney, doth hereby covenant, grant, and agree, to and with the said William Patterson, his heirs and assigns, in manner and form following, to wit, that he, the said Basil Jones, and his heirs, the above mentioned five tracts or parcels of land and premises against him, the said Basil Jones, and his heirs, and against all and every other person and persons whatsoever, claiming or to claim the same, or any part thereof, unto the said William Patterson, his heirs and assigns, shall and will well and truly warrant, and by these presents for ever defend. And that he, the said Basil Jones, and his heirs, shall at all times or at any time hereafter, at the request and at the cost of the said William Patterson, his heirs and assigns, make, do, or execute, or cause to be made, done, or exe-

cuted, any such further or other instrument or instruments of writing as may be necessary to assure and confirm the aforesaid five tracts of land and premises unto the said William Patterson, his heirs or assigns. And the said Thomas Smyth, junior, doth hereby covenant and agree, with the said William Patterson, his heirs and assigns, that at his or their cost and charges, he, the said Thomas Smyth, junior, as attorney aforesaid, shall and will execute any reasonable act or instrument of writing, at any time hereafter, for the better and more perfect conveyance and assurance of the aforesaid five tracts of land and premises unto the said William Patterson, his heirs and assigns, for ever. In witness whereof, the said Basil Jones, by his attorney, and the said Thomas Smyth, junior, hath hereunto set their hands and seals the day and year first above written.

BASIL JONES. [L. S.]
Me, his attorney in fact, Thomas Smyth, Jr.
THOMAS SMYTH, Jr. [L. S.]

Signed, sealed, and delivered in presence of
JOHN LYNCH,
GEORGE SALMON.

Received, November eighteenth, in the year of our Lord one thousand seven hundred and ninety-three, of the within named William Patterson, the sum of five thousand six hundred and twenty-five pounds, current money of Maryland, it being the consideration money within mentioned to be received by me.

THOMAS SMYTH, Jr.

Witness,
GEORGE SALMON.

BALTIMORE COUNTY, MARYLAND, to wit:

Be it remembered, that on the eigtheenth day of November, in the year of our Lord one thousand seven hundred and ninety-three, the within named Thomas Smyth, junior, attorney in fact for the within grantor, Basil Jones, appeared before us, two of the justices of the peace for the county aforesaid, and did acknowledge the within instrument of writing to be his act and deed; that is to say, the act and deed of the within named Basil Jones, according to the true intent and meaning thereof; and the lands and premises therein mentioned to be the right and estate of the within named William Patterson, his heirs and assigns.

GEORGE SALMON.
GEO. GOULD. PRESBURY.

STATE OF MARYLAND, *ss.*

I, John Kilty, clerk of the executive council of the State of Maryland, do hereby certify to all whom it may concern, that George Salmon and George Gouldsmith Presbury, Esqs., whose names are subscribed to the above certificate of acknowledgment, were at the time of signing the same justices of the peace for Baltimore county, in the State aforesaid, duly appointed, commissioned, and authorised; and that to all certificates so signed by them, or either of them, full faith and due credit is and ought to be given.

Witness my hand this twentieth of December, 1793.

JOHN KILTY, *Clerk of Council.*

MARYLAND, *sc.*

In testimony that John Kilty is clerk of the executive council, I have hereto affixed the great seal of said State, this seventh day of January, seventeen hundred and ninety-four.

SAMUEL HARVEY HOWARD,
Register Circuit Court.

Recorded in the clerk's office in Franklin county, in Book K K, folios 161, 162, and 163, the 25th day of July, 1795.

JOHN SMITH, *Clerk.*

Mr. Walker,—$1 00.

[*See Exhibit C.*]

The above plan is a representation of the resurveys made at different times, agreeable to the rules of court, in the case pending in the federal court, Doe ex dem. William Patterson vs. Elisha Winn and others, in an action of ejectment. Certified 17th day of October, 1827.

E. L. THOMAS,
Surveyor appointed by the Court.

Duplicate.

We have carefully examined the above plan with our notes taken on a resurvey made in April, 1830, under an enlarged rule of the court, of November term, 1829, and find it a correct representation.

Given under our hands this 21st April, 1830.

EDWARD LLOYD THOMAS, *Surveyor.*
Surveyor appointed by the Court.
J. S. VINCENT, *Dep'y Surveyor.*

THE UNITED STATES OF AMERICA, *District of Georgia*, ss.

ELISHA WINN AND OTHERS, plaintiffs in error,
versus
DOE ex dem. WILLIAM PATTERSON, defendants. } *Ejectment.*

To William Patterson, Esquire, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington city, on the second Monday in January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the sixth circuit and district of Georgia, wherein Elisha Winn and others are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment and proceedings in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand, at Savannah, in the district aforesaid, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and thirty-three.

J. CUYLER, *J. C. C. C. G. D.*

GEORGE GLEN, *Clerk.*
SEABORN JONES,
RICHARD W. HABERSHAM,
Plaintiffs' Attorneys.